

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 622 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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KAMLESHKUMAR LALJIBHAI KADIA

Versus

LAXMIBEN D/O LABHUBHAI CHAVDA  
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Appearance:

MR BM GUPTA for Petitioner  
MR JB PARDIWALA for Respondent No. 1  
Mr. AJ Desai, APP for Respondent No. 2  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 30/03/98 &

01/04/98

ORAL JUDGEMENT

Heard learned Advocate Shri B.M. Gupta for petitioner, learned Advocate Mr. J.B.Pardiwala for respondent No.1. and learned APP Mr.A.J. Desai for Respondent No.2. Rule. Learned Advocate Mr. J.B. Pardiwala and learned APP Mr. A.J. Desai waives service of rule on behalf of respective respondents.

2. The petitioner has challenged the legality and propriety of order passed by learned JMFC, Ganadevi, District Valsad dated 9.12.1997 in the proceedings of Criminal Case No. 1230 of 1992.

3. That the respondent No.1 has filed Criminal Case No.1230 of 1992 in the court of JMFC, Ganadevi, District Valsad, against present petitioner and 4 other accused, who are father, mother, brother and sister-in-law of present petitioner. Said complaint is filed under Sections 405 and 406 read with Section 114 of the IPC. That pending the proceedings, the present petitioner along with four accused moved Application Exhibit 96 dated 29.11.1997 to claim exemption from remaining personally present and to permit them to appear through their advocate Mr. B.M. Gupta and Associates. That Respondent No.1 opposed the Application and learned JMFC after hearing both the parties, decided the said Application vide impugned order that except present petitioner, all other four accused Nos. 2 to 5 of Criminal Case No. 1230 of 1992 are granted exemption on condition that learned advocate of said accused shall remain present on every date and conduct the matter and shall not claim adjournment on the ground that he needs to take instruction from his client. That accused shall have to give undertaking to that effect. It is also a condition of the order that accused shall remain present as and when called by the court and in the event of any breach of any of the terms, the exemption granted by said order shall automatically be revoked. That application of the present petitioner as accused No.1 was rejected. Being aggrieved and dissatisfied by said order of rejection, the petitioner has preferred the present Revision Application.

4. Shri B.M. Gupta learned advocate appearing for the petitioner has heavily relied on the observations made by this Court in the matter of JAYANTILAL CHHAGANLAL PANCHAL v. SHIRISH SHANTILAL PANDYA, reported in 1986 GLH 166 and submitted that if the presence of the accused is not necessary for identification for further conduct of the trial. There is no reason why court should not grant him exemption from remaining personally present in the court. That in the instant case, it was submitted before the trial court that petitioner is the only earning member of the family. That petitioner is plying rickshaw to earn his livelihood. That the refusal to grant exemption from remaining personally present in the court is likely to adversely affect the earning activity of the petitioner, and as such, the impugned order is illegal and improper. Shri Gupta has also relied on observations

made by this court in para-4 of the matter reported vide 1995 (2) GLH (U.J.) page 7 and has urged that impugned order be set aside and quashed and the petitioner be granted exemption from remaining personally present in the court during the proceedings of Criminal Case No. 1230 of 1992.

5. As against that Shri J.B. Pardiwala, learned Advocate appearing for respondent No.1 has submitted that court exercising revisional power may refuse to interfere with the impugned order even if it is shown not fully in accordance with law if substantial justice is found to have been done between the parties. That in the instant case, trial court has exercised the discretion after taking into consideration all the relevant facts including the facts of claiming number of adjournments by the present petitioner through telegram, and as such, the court has imposed the condition on accused Nos. 2 to 5 while granting exemption and has rejected the application of the present petitioner to expedite the proceedings of the trial. Under the circumstances, this court should not interfere with the impugned order as prayed by the petitioner. In order to support this submission, Shri Pardiwala has referred to and relied on the observations made by this court in para 15 and 16 of the judgment rendered in the matter of KANTILAL PUNJAJI CHAVDA v. NANAUBHAI KANTILAL CHAVDA reported in 1992 (2) GLR 1520.

6. I have carefully gone through the impugned order to construe the same in the context of rival submissions. In my opinion, learned JMFC, Ganadevi appears to have exercised discretion while passing the impugned order after considering all the relevant and material facts involved in the matter. That the said order cannot be said to be arbitrary, capricious or perverse. It may be noted that on satisfactory progress of the trial, the petitioner as accused of Criminal Case No. 1230 of 1992 could make fresh application to claim exemption on appropriate grounds and as such the impugned order is not likely to cause substantial injustice to the petitioner and as such at this stage I do not deem it just or proper to interfere with the said order.

7. As a result the petition fails and stands disposed of as rejected. Rule is discharged. No order as to costs.

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p.n.nair

